

Interlocal Cooperation Agreement between Alliance Behavioral Healthcare and the City of Durham

This Interlocal Cooperation Agreement (hereinafter “Agreement”) is made and entered into this the **1st** day of **December, 2013** between **Alliance Behavioral Healthcare**, (hereinafter “Alliance”) a Local Management Entity/ Managed Care Organization (“LME/MCO”) organized and operating under Chapter 122C of the North Carolina General Statutes as a human services agency for the County of Durham, and the **City of Durham**, through the **Office of Economic and Workforce Development** (hereinafter the “City” or “Office of Economic and Workforce Development” or OEWD”), a municipal corporation (individually referred to as a “Party” and collectively as “the Parties”). This Agreement is made pursuant to Chapter 160A, Article 20 of the North Carolina General Statutes.

Alliance and the City agree as follows:

Section 1. Purpose

To implement a training and employment program using grant funding awarded by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) to help target transition age youth (ages 16-21) who have been identified as (1) having significant functional impairments, and/or (2) disconnected or at risk of becoming disconnected from services and supports. Specifically, the program will support a minimum of 50 transitioning youth in seeking gainful employment through the collaborative efforts of the Alliance BECOMING (**B**uilding **E**very **C**hance of **M**aking **I**t **N**ow and **G**rown up) System of Care project.

Section 2. Scope of Work, Duties and Obligations of OEWD

OEWD Shall:

- 2.1 Recruit, hire and retain an *Employment Coordinator* who will report directly to the OEWD Workforce Development Manager and who will perform the following activities:
 - a. Program implementation;
 - b. Monthly reporting on all employment related activities;
 - c. Support in the coordination of outreach, recruitment, and screening activities stipulated under the BECOMING grant;
 - d. Support in the development and implementation of youth employment skills assessments in an effort to ascertain employment readiness of program participants;
 - e. Provide support and work in conjunction with Alliance Behavioral Healthcare staff and/or case managers affiliated with this program to develop and implement *Individual Service Strategies* that will increase the employability and marketability of program participants;
 - f. Conduct youth employment related focus groups; and
 - g. Provide support on any other duties as specified by and/or related to the implementation of the BECOMING project.

2.2 Administer and coordinate all necessary *Human Resources, Performance Management, and Employee Training* activities that are necessary of the *Employment Coordinator* in support of this program.

2.3 Work in collaboration with JobLink partners to maximize outcomes for participants of this program. OEWD will make employment services available to participants under the JobLink System, such as coordinating job development activities; providing outreach to public/private worksites in an effort to place participants; career counseling; and providing employment referral services.

2.4 Review, sign and forward all *Employment Coordinator* time sheets and reports to Alliance and submit such information along with other billing information pursuant to Section 5.2, “Billing and Reimbursement” below.

Section 3. Duties and Obligations of Alliance Behavioral Healthcare

Alliance Shall:

3.1 Serve as the primary coordinator for this project, including (but not limited to): monitoring of all reporting measures; program oversight and evaluation; oversight of partnership agreements; and support partnership/collaboration to ensure desired outcomes of the program.

3.2 Subcontract with qualified private mental health agencies that meet Alliance credentialing criteria and will provide outreach, recruitment, and oversight of participants affiliated with this program.

3.3 Work in conjunction with *Employment Coordinator* and OEWD staff in order to develop, monitor, and evaluate *Individual Service Strategies* of program participants and provide mental health, substance abuse, and/or any related referral services that will help participants of the program achieve and attain success within the program.

Section 4. Compliance with Laws, Recordkeeping and Reporting.

4.1 Compliance with Laws and Regulatory Requirements. In the performance of its duties under this Agreement, OEWD agrees to comply with all applicable Federal and State laws, rules, and regulations.

4.2 Record Keeping. OEWD shall maintain all information and records reviewed or created in the performance of its duties under this Agreement. OEWD agrees to provide Alliance access to the facilities, books and records maintained under the Agreement during normal business hours so that Alliance may perform its audit obligations, provided that any such access shall be consistent with applicable State and Federal laws and regulations. The Parties agree that all such documents shall be kept confidential, consistent with applicable State and Federal laws and regulations. OEWD’s obligations to maintain records under this Section shall continue following termination of the Agreement.

4.3 Cooperation with Oversight Activities. OEWD agrees to cooperate with Alliance in its oversight activities and shall take such corrective action as is necessary to comply with State and Federal law. OEWD further agrees to provide timely, accurate, and appropriate data and information to enable Alliance to fulfill applicable accrediting organizations' and Federal and State regulatory filing requirements, provided the disclosure of such information is consistent with applicable State and Federal laws regarding confidentiality.

4.4 The *Employment Coordinator* hired for this project will be responsible for submitting written reports and supporting documentation to the Senior Workforce Development Manager no later than the tenth business day following the month in which Services were performed under this Agreement that include, but are not limited to: description of project activities, program expenditures, number of participants served, types of services provided, etc. during the reporting period. Alliance will provide OEWD with all requisite reporting requirements and formats within ten (10) business days of the execution of this Agreement.

Section 5. Funding

5.1 Budget: Funding for this contract shall be provided from Alliance 's BECOMING grant awarded by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) in an amount not to exceed \$60,000.00 for reimbursements of all expenditures associated with the Employment Program Coordinator position from December 1, 2013 through April 30, 2014, as well as those unreimbursed services provided prior to December 1, 2013, consistent with this program with appropriate documentation.

Alliance Behavioral Healthcare shall not be obligated to pay OEWD any payments, fees, expenses, or compensation other than those authorized by this section. Total payments will not exceed \$60,000.00 over the contract period.

5.2 Billing and Reimbursement: Beginning December 20, 2013, OEWD shall send invoices to Alliance once every two months for the amounts to be paid pursuant to the contract. On or before May 20, 2014, OEWD shall invoice Alliance for all amounts owed through April 30, 2014 in order to meet federal fiscal year deadlines. OEWD may submit invoices for unreimbursed services provided prior to December 1, 2013, consistent with this program with appropriate documentation. OEWD agrees and understands that it is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities, and Alliance will not deduct such taxes from any payments made hereunder. OEWD shall submit an itemized invoice to Alliance no later than the 20th calendar day of the month following the prior two-month period during which Services were performed. Invoices must be on letterhead, include a detailed accounting of hours and services provided, shall reflect the above budget, be accompanied with copies of ledger pages reflecting charges and any supporting documentation, include any additional information as maybe reasonably requested by Alliance, and should be sent to the following address:

Alliance Behavioral Healthcare
Attention: Accounts Payable

4600 Emperor Boulevard, Suite 200
Durham, NC 27703
accounts payable@alliancebhc.org

Failure to submit the required invoice as specified above may result in non-payment. Payment will be processed to OEWD within twenty (20) business days of receipt and approval of the invoice by Alliance.

Section 6. Confidentiality, Security and Privacy of Health Information.

Alliance is a health plan and is required to comply with any and all laws relating to privacy and/or security of protected health information (“PHI”) or other healthcare, public assistance or social services information, including but not limited to the Health Insurance Portability & Accountability Act of 1996 (“HIPAA”) and its implementing regulations, 45 CFR Parts 160, 162 & 164, as further expanded by the Health Information Technology for Economic and Clinical Health Act (HITECH Act), which was adopted as part of the American Recovery and Reinvestment Act of 2009, commonly known as “ARRA” (Public Law 111-5) and any subsequent modifications thereof, the Substance Abuse Confidentiality regulations set forth in 42 CFR Part 2, N.C.G.S. § 122C-51, *et seq.*, N.C.G.S. § 108A-80, 10A NCAC Subchapter 26B, and DMH/DD/SAS Confidentiality Rules published as APSM 45-1 (effective January 2005). The scope of work under this Agreement does not require that Alliance share or provide to OEWD any protected health information. Accordingly, the Parties agree that neither the City nor the OEWD Employment Coordinator is considered a “Business Associate” pursuant to HIPAA. To the extent that any protected health information is shared with OEWD, Alliance will obtain a signed consent and authorization to release records from the participant or parent/ legal guardian of the participant in order to share such PHI.

Section 7. Term

The Term of this agreement is from **December 1, 2013** to **April 30, 2014** unless sooner terminated as provided herein.

Section 8. Indemnity

Alliance and OEWD agree to each be solely responsible for their own acts or omissions in the performance of each of their individual duties hereunder, and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorney fees resulting from, or attributable to any and all of their individual acts or omissions. No party shall have any obligation to indemnify the other, and/or its agents, employees and representatives.

Section 9. Insurance

9.1 Alliance acknowledges that City is a municipal corporation existing under the laws of the State of North Carolina, and as such, maintains different insurance coverages than would a private sector entity. City of Durham is self-insured and maintains excess coverage for General Liability including Errors and Omissions coverage. The City will maintain a self-insured retention of at least \$500,000 throughout the term of the contract.

9.2 If the City purchases insurance in place of its self-insured plan, it will provide proof of coverage to the Alliance.

Section 10. Termination.

10.1 Event of Default. Any one or more of the following acts or omissions of the OEWD shall constitute an Event of Default hereunder, if OEWD fails to cure such default after first being noticed:

- i. Failure to perform the Services satisfactorily or on schedule,
- ii. Failure to submit any report required hereunder; and/or
- iii. Failure to perform any other covenant, term, or condition of this Agreement.

10.2 Notice and Opportunity to Cure. Upon the occurrence of an Event of Default, Alliance shall give OEWD written Notice of the Event of Default, specifying the Event of Default and requiring it to be remedied within, in the absence of greater specification of time, ten (10) business days from the date of the notice, unless the act of curing the default shall, by its nature, require more than the specified time given in the notice, in which case OEWD shall be given such additional time to cure.

10.3. Termination for Default. If after giving the required notice, OEWD fails to cure or correct the default in a time allotted, Alliance may take one or all of the following actions:

1. Terminate the agreement, effective five (5) days after giving OEWD written Notice of Termination; and/or
2. Deduct all reasonable expenses incurred by Alliance for damages directly caused by OEWD's Event of Default; and/or
3. Treat the agreement as breached and pursue any of its remedies at law.

10.4 Termination for Convenience.

This Contract may be terminated, without cause, by either party upon sixty (60) days' written notice to the other party. This termination notice period shall begin upon receipt of the Notice of Termination. Alliance shall reimburse the City for any expenses relating to the obligations under this Agreement incurred by OEWD prior to the date of termination for convenience, and after the date of termination for convenience, but only for expenses OEWD was contractually obligated or liable to pay as of the notice.

10.5 Loss of Profits. Termination of this Contract under either section shall not form the basis of any claim for loss of anticipated profits by either party.

Section 11. Audit Rights

For all Services being provided hereunder, Alliance Behavioral Healthcare shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, OEWD must make the materials to be audited available within one (1) week of the request for them.

Section 12. Relationship of Parties

Alliance Behavioral Healthcare and OEWD agree that OEWD is an independent contractor and shall not represent itself as an agent or employee of Alliance Behavioral Healthcare for any purpose in the performance of OEWD's duties under this Agreement. Accordingly, OEWD shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of OEWD's activities in accordance with this Agreement. For purposes of this contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

OEWD, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

Section 13. Construction.

The Parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Section 14. Additional Assurances.

Each Party agrees to perform all further acts, and execute, acknowledge and deliver any and all documents, which is reasonably necessary to confirm, complete or effectuate the provisions of the Agreement.

Section 15. U.S. Office of Inspector General Exclusion List.

Alliance is prohibited from contracting with any person or entity identified on the List of Excluded Individuals / Entities maintained by the Office of Inspector General of the U.S. Department of Health & Human Services (HHS) (the "Exclusion List"). OEWD specifically warrants and represents that OEWD and its owners/ operators/ managing employees are not included on the Exclusion List as of the effective date of the Agreement. OEWD further agrees that should it or any of its owners/ operators/ managing employees be included on the Exclusion List at any time during which it performs Services pursuant to this Agreement, such listing shall be considered a material breach and the Agreement shall be immediately terminated without the opportunity to cure.

Section 16. Assignment.

This Agreement is non-assignable and non-transferrable. With the exception of qualified services providers under contract with the City, any attempt by either Party to assign or sub-contract its obligations hereunder to other entities shall be void.

Section 17. No Third Party Beneficiary Contract Rights Conferred.

Nothing in this Agreement shall be construed as creating or justifying any liability, claim or cause of action, however alleged or arising, by any third party against Alliance.

Section 18. Notice.

All notices (including material change in OEWD's ability to perform), reports, records, or other communications which are required or permitted to be given to the Parties under the terms of this Agreement (other than Invoices as set forth in Section 5) shall be sufficient in all respects if given in writing and delivered in person, by confirmed facsimile transmission, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

If to Alliance: Alliance Behavioral Healthcare
Attention: Ann Oshel, Director of Community Relations
4600 Emperor Boulevard, Suite 200
Durham, NC 27703

If to OEWD: City of Durham
Attn: Kevin Dick, Director of OEWD
101 City Hall Plaza
Durham, NC 27705

Section 19. Binding Effect, Successors and Assigns

This Agreement and any attachments, exhibits or schedules referenced or attached, and all terms and provisions included therein shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. OEWD shall not assign its interest in this Agreement without the written consent of Alliance Behavioral Healthcare.

Section 20. E-Verify Compliance

Each of the parties covenants that if it enters into any subcontracts in order to perform any of its obligations under this contract, it shall require that the contractors and their subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. In this E-Verify Compliance section, the words contractors, subcontractors, and comply shall have the meanings intended by applicable provisions of NC Gen. Stat. Chapters 153A and 160A.

Section 21. Governing Law

This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General County of Justice in the County of Durham and the State of North Carolina.

Section 22. Entire Agreement

This contract, shall constitute the entire understanding between Alliance Behavioral Healthcare and OEWD and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

Section 23. Headings

The subject headings of the sections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

Section 24. Nonwaiver.

No covenant, term, condition, or undertaking contained in this Agreement may be waived except by the explicit written agreement of the Parties. Forbearance or indulgence in any other form by either Party in regard to any covenant, condition or undertaking to be kept or performed by the other Party shall not constitute a waiver thereof, and until complete satisfaction or performance of all such covenants, conditions, and undertakings have been satisfied, the other Party shall be entitled to invoke any remedy available under the Agreement, despite any such forbearance or indulgence.

Section 25. Severability.

If any one or more provisions of this Agreement are declared invalid or unenforceable, the same shall not affect the validity or enforceability of any other provision of this Agreement and such invalid or unenforceable provision(s) shall be limited or curtailed only to the extent necessary to make such provision valid and enforceable.

Section 26. Counterparts.

This Agreement shall be executed in two (2) counterparts, each of which will be deemed an original.

IN WITNESS WHEREOF, each Party has caused this agreement to be executed in multiple copies, each of which shall be deemed an original, as the act of said Party. Each individual signing below certifies that it has been granted the authority to bind that Party to the terms of this Agreement and any Addendums or Attachments thereto.

Alliance Behavioral Healthcare LME/MCO

By: _____

Ellen S. Holliman, CEO/ Area Director

Date: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Sara Pacholke, Finance Director

CITY OF DURHAM

By: _____

City Manager

Date: _____

ATTEST:

By: _____

City Clerk

Date: _____

Preaudit Certificate:

ACKNOWLEDGMENT BY CITY OF DURHAM

Name of other party to the contract:

ALLIANCE BEHAVIORAL HEALTHCARE

Title of the contract:

**INTER LOCAL COOPERATION AGREEMENT BETWEEN ALLIANCE BEHAVIORAL
HEALTHCARE AND THE CITY OF DURHAM**

I, _____, a notary public, certify:
(Type or print name of Notary Public)

(1) _____ personally appeared before me
(Type or print name of City Clerk or Deputy City Clerk who attested)

in Durham County, N. C. on this day; (2) I have personal knowledge of her identity; and (3) she acknowledged that by authority duly given and as the act of the City of Durham, the foregoing document was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.

This the _____ day of _____, 20_____.